

HOUSE BILL NO. 533

INTRODUCED BY S. VICK, KEENAN

BY REQUEST OF THE HOUSE JOINT APPROPRIATIONS SUBCOMMITTEE ON LONG-RANGE
PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT OPERATING BUDGETS AND FUND TRANSFERS MUST CONFORM TO CONDITIONS CONTAINED IN THE GENERAL APPROPRIATIONS ACT; CLARIFYING THAT THE LEGISLATURE MAY RESTRICT THE USE OF FUNDS APPROPRIATED FOR PERSONAL SERVICES TO ALLOW USE ONLY FOR THE PURPOSE OF THE APPROPRIATION; CLARIFYING THAT CHANGES MUST BE APPROVED IN WRITING; AMENDING SECTIONS 2-15-112, 17-7-138, AND 17-7-139, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-112, MCA, is amended to read:

"2-15-112. Duties and powers of department heads. (1) Except as otherwise provided by law, each department head shall:

(a) supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this chapter or other law;

(b) establish the policy to be followed by the department and employees;

(c) compile and submit reports and budgets for the department as required by law or requested by the governor;

(d) provide the governor with any information that the governor requests at any time on the operation of the department;

(e) represent the department in communications with the governor;

(f) (i) prescribe rules, consistent with law and rules established by the governor, for the;

(A) administration of the department;

(B) ~~the~~ conduct of the employees;

(C) ~~the~~ distribution and performance of business; and

(D) ~~the~~ custody, use, and preservation of the records, documents, and property pertaining to

1 department business.

2 (ii) The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of
3 public instruction may prescribe their own rules for their departments or offices, and the governor may not
4 prescribe rules for them.

5 (iii) The rules described in this subsection (1)(f) are limited to statements concerning only the
6 internal management of the agency and not affecting private rights or procedures available to the public.
7 This section does not authorize the adoption of any rule as rules are defined in the Montana Administrative
8 Procedure Act.

9 (g) subject to the approval of the governor, establish the internal organizational structure of the
10 department and allocate the functions of the department to units to promote the economic and efficient
11 administration and operation of the department. The internal structure of the department must be
12 established in accordance with 2-15-104(2).

13 (h) subject to law, establish and make appointments to necessary subordinate positions and
14 abolish unnecessary positions;

15 (i) maintain a central office in Helena for the department and maintain other facilities throughout
16 the state as may be required for the effective and efficient operation of the department.

17 (2) Except as otherwise provided by law, each department head may:

18 (a) subject to law, transfer employees between positions, remove persons appointed to positions,
19 and change the duties, titles, and compensation of employees within the department;

20 (b) delegate any of the functions vested in the department head to subordinate employees;

21 (c) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal
22 government or any other source in administering the department's functions;

23 (d) enter into agreements with federal, state, and local agencies necessary to carry out the
24 department's functions; and

25 (e) eliminate positions within the department. If the salary for an eliminated position is not
26 redistributed as provided for under 2-18-1107, the office of budget and program planning shall increase
27 the department's appropriation in the second year of the biennium by an amount equal to one-half of the
28 savings resulting from the elimination of a position. The increased appropriation in the second year of the
29 biennium may be expended at the discretion of the department head, provided that the expenditure is
30 consistent with the goals and objectives of the department. The remaining one-half must revert to the

1 original funding source. This subsection ~~(e)~~ (2)(e) does not apply to an agency allocated to a department
2 in either year of the 2 years of the biennium for administrative purposes, as provided in 2-15-121. ~~Section~~
3 ~~17-7-138 does not apply to this subsection (e)."~~

4

5 **Section 2.** Section 17-7-138, MCA, is amended to read:

6 **"17-7-138. Operating budget.** (1) (a) Expenditures by a state agency must be made in substantial
7 compliance with the budget approved by the legislature. Substantial compliance may be determined by
8 conformity to the conditions contained in the general appropriations act and to legislative intent as
9 established in the narrative accompanying the general appropriations act. An explanation of any significant
10 change in agency or program scope, objectives, activities, or expenditures must be submitted to the
11 legislative fiscal analyst for review and comment by the legislative finance committee prior to any
12 implementation of the change. A significant change may not conflict with a condition contained in the
13 general appropriations act. If the approving authority certifies that a change is time-sensitive, the
14 approving authority may approve the change prior to the next regularly scheduled meeting of the legislative
15 finance committee. The approving authority shall submit all proposed time-sensitive changes to the
16 legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the
17 legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many
18 members as possible of the proposed change and communicate any concerns expressed to the approving
19 authority. The approving authority shall present a report fully explaining the reasons for the action to the
20 next meeting of the legislative finance committee. Except as provided in subsection (2), the expenditure
21 of money appropriated in the general appropriations act is contingent upon approval of an operating budget
22 by August 1 of each fiscal year. An approved original operating budget must comply with state law and
23 conditions contained in the general appropriations act.

24 (b) For the purposes of this subsection (1), an agency or program is considered to have a
25 significant change in its scope, objectives, activities, or expenditures if:

26 (i) the expenditure change exceeds \$1 million; or

27 (ii) the expenditure change exceeds 25% of a budget category and the change is greater than
28 \$25,000. If there have been other changes to the budget category in the current fiscal year, all the
29 changes, including the change under consideration, must be used in determining the 25% and \$25,000
30 threshold.

(2) The expenditure of money appropriated in the general appropriations act to the university system units, as defined in 17-7-102, is contingent upon approval of an operating budget by October 1 of each fiscal year. All other requirements in this section apply to the university system.

(3) The operating budget for money appropriated by the general appropriations act must be separate from the operating budget for money appropriated by another law except a law appropriating money for the state pay plan or any portion of the state pay plan. The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation. Each operating budget must include expenditures for each agency program, detailed at least by first-level categories as provided in 17-1-102(3). Each agency shall record its operating budget and any approved changes on the statewide budget and accounting system. Forms used for changing an operating budget must reference the current, complete, and approved operating budget, show the proposed changes to the operating budget, and reference any other pending documents to change the operating budget. THE FORMS MUST BE SIGNED."

Section 3. Section 17-7-139, MCA, is amended to read:

"17-7-139. Program transfers. (1) Unless prohibited by law or a condition contained in the general appropriations act, the approving authority may approve agency requests to transfer appropriations between programs within each fund type within each fiscal year. The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation. An explanation of any transfer that involves a significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. If the approving authority certifies that a request for a transfer representing a significant change in agency or program scope, objectives, activities, or expenditures is time-sensitive, the approving authority may approve the transfer prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee.

1 All program transfers must be completed within the same fund from which the transfer originated. A
2 request for a transfer accompanied by a justification explaining the reason for the transfer must be
3 submitted by the requesting agency to the approving authority and the office of budget and program
4 planning. Upon approval of the transfer IN WRITING, the approving authority shall inform the legislative fiscal
5 analyst of the approved transfer and the justification for the transfer. If money appropriated for a fiscal
6 year is transferred to another fiscal year, the money may not be retransferred.

7 (2) For the purposes of subsection (1), an agency or program is considered to have a significant
8 change in its scope, objectives, activities, or expenditures if:

9 (a) the budget transfer exceeds \$1 million; or

10 (b) the budget transfer exceeds 25% of a program's total operating plan and the transfer is greater
11 than \$25,000. If there have been other transfers to or from the program in the current fiscal year, all the
12 transfers, including the transfer under consideration, must be used in determining the 25% and \$25,000
13 threshold."

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15 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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